

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1590 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the Judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MERUBHAI MANDANBHAI ODEDARA
VERSUS
RANIBEN MERUBHAI ODEDARA

Appearance:

MR HM PRACHCHHAK for Petitioners
MS SEJAL MANDAVIA for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 16/03/2000

C.A.V. JUDGMENT

1. The respondent filed Misc. Civil Application
No. 66 of 1999 under section 18 and 20 of Hindu

Adoption and Maintenance Act in the court of Civil Judge (S.D.), Junagadh. The relationship of parties are as under:

The respondent is the mother of the petitioner No.2 and wife of petitioner No.1.

2. The respondent has also filed Criminal Misc. Application under section 125 of Cr.P.C. in the court of Judicial Magistrate First Class at Porbandar being Misc. Criminal Application No. 84 of 1992. The petitioner filed civil suit in the court of Civil Judge (S.D.) under section 14 of Hindu Marriage Act for divorce. In the proceedings initiated by the respondent under sec. 125 of Cr. P.C., the maintenance has been awarded initially at the rate of Rs. 400/= p.m. but later on, on application for enhancement thereof it was enhanced to Rs. 500/- p.m.. In the proceedings under section 18 and 21 of the Hindu Adoption and Maintenance Act, the respondent prays for grant of interim maintenance at the rate of Rs. 1000/p.m. each from the petitioners. This application came to be allowed by the court below under the order dated 17th September, 1999. The petitioners were directed to pay each Rs. 1000/- p.m. to the respondent as interim maintenance from the date 14th July, 1998.

3. Learned counsel for the petitioners submitted that the husband of the respondent is in service. He is in a position to maintain her and it is not the liability of the son to maintain her. The application filed by the respondent under section 20 of the Hindu Adoption and Maintenance Act, 1956 when the husband is alive and has his own earnings, against the son is wholly misconceived. It has next been contended that the learned trial court has found as a fact that the petitioner No.1 has his own source of income and against him the order has been passed for giving maintenance to the wife. This order simultaneously could not have been passed against the son also. So far as the petitioner No.1 is concerned, learned counsel for the petitioner raised two fold contentions. Firstly, the court has no jurisdiction to entertain the application. Secondly it is contended that while passing the order for grant of interim maintenance in the proceedings, the amount of maintenance which the respondent was getting under section 125 of Cr.P.C. was not given set off.

4. Ms. Mandavia, learned counsel for the respondent strongly opposed this revision application. It is contended that it is equally the duty of the son

to maintain his mother. The amount of maintenance awarded under section 125 of Cr. P.C. cannot be given set off. That is an independent separate maintenance awarded. Lastly, it is contended that the question of jurisdiction is not relevant at this stage.

5. I have given my thoughtful consideration to the rival contentions made by the learned counsel for the parties.

6. This court cannot be oblivious of the fact that the learned trial court has only considered to pass the order for grant of interim maintenance. The main application is still pending and therein the question of jurisdiction can be put in issue and the court will decide therein. At this stage where the wife is praying for interim maintenance this question of jurisdiction is hardly of any substance and relevance. At the most, if ultimately court finds that it has no jurisdiction, the plaint has to be returned for presentation to appropriate court. On this ground, the prayer of interim maintenance cannot be rejected. The contention raised by the learned counsel for the petitioner on the ground of lack of jurisdiction of the trial court to entertain the application is devoid of any substance and merits at this stage.

7. Learned counsel for the respondent does not dispute that the wife is getting Rs. 500/- p.m. as maintenance from her husband, the petitioner No.1 herein under section 125 of Cr. P.C., 1973.

8. There are different Acts of socio-economic benefits under which the wife may be entitled to get maintenance from her husband or her son or daughter, as the case may be, but it is difficult to accept that she is entitled to get the maintenance under all the Acts simultaneously and from all persons. Maintenance means and its object and purpose is that wife may be given a reasonable sum so that she may maintain herself. Once under a particular Act this maintenance has been awarded then in all the cases, it is difficult to accept that she can go for such maintenance again in another Act. In this respect, reference may be made to section 125 of the Criminal Procedure Code, 1973 and provisions as contained in Hindu Adoption and Maintenance Act, 1956 and the Hindu Marriage Act, 1956. Under section 125 of Cr. P.C. 1973, the court cannot grant an amount exceeding Rs. 500/- p.m. as maintenance to the wife. In the other Acts i.e. Hindu Adoption and Maintenance Act, 1956 and Hindu Marriage Act, 1956, no such ceiling

is there. The wife who is getting maintenance under sec. 125 of Cr. P.C. looking to the ceiling limit and the sum of maintenance certainly has a right to approach to the court under Hindu Adoption and Maintenance Act, 1956 for reasonable sum of maintenance to be awarded to her. While considering the matter for grant of interim or final maintenance under the Act aforesaid, the court has to take into consideration the sum of maintenance which the wife is getting under sec. 125 of Cr. P.C.. While considering the prayer for interim maintenance or final maintenance under Hindu Adoption and Maintenance Act, 1956 the court has to fix a reasonable sum to be awarded to her and thereafter the amount of maintenance which the wife is getting under sec. 125 of Cr. P.C. has to be deducted. While fixing the amount of maintenance to be given to the wife, the court has to keep in mind the source of income of husband and proportionate amount can be given so that he may be able to meet out his own expenses as well as to discharge his other liabilities. In case under sec. 125 of Cr. P.C. as there is a maximum ceiling of sum of maintenance such consideration may not be there. So in the matter of grant of maintenance under Hindu Adoption and Maintenance Act, 1956, the court has to take into consideration this aspect of the matter and while fixing a reasonable sum of interim maintenance due credit has to be give to amount of maintenance which the wife is receiving under sec. 125 of Cr. P.C. and it has to be given set off. There are two ways to deal with such matters. Either independently of this figure of amount of maintenance which the wife is getting under sec. 125 of Cr. P.C., the learned trial court may determine a reasonable sum of maintenance which has to be awarded to the wife looking to the source of income of the husband and then this amount may be deducted or while deciding a reasonable sum, this amount may be taken into consideration at the very time and then the amount of maintenance has to be reached. The contention of the learned counsel for the respondent is accepted then she will get the third maintenance by filing application under sec. 24 of the Hindu Marriage Act, 1956 in the proceedings initiated by the petitioner NO.1 for divorce but that cannot be permitted. I do not find any substance in the contention of Ms. Mandavia, learned counsel for the respondent that the amount of maintenance which the wife is getting under sec. 125 of Cr. P.C. cannot be looked into nor it can be given set off from the amount of interim maintenance awarded in these proceedings. From the order of the learned trial court I do not find that this aspect of the matter has been considered. It is a case where in addition to what

the wife is getting as amount of maintenance under sec. 125 of Cr. P.C. further amount has been awarded. The court has not considered that this amount has to be given set off from the amount of maintenance to be awarded though as interim maintenance to the wife. The point raised whether where the husband is in a position to maintain the wife, son can be made liable for maintenance and more so in a case where the order to maintain the wife has been passed against the husband also, needs to be considered. In this case, the court without looking to the provisions of section 18 and 20 of the Hindu Adoption and Maintenance Act, 1956 mechanically passed the order as if the son is liable to maintain the mother irrespective of the fact that the father is in a position to maintain the wife. Section 18 of the Act puts an obligation on the husband to maintain the wife during her life time. In a case as given out in subsection 2 of section 18, the wife shall be entitled to live separately from her husband and can claim the maintenance. So the first and primary duty and obligation to maintain the wife is on husband. Section 20 of the Act carves out an exception and it will apply only in case where the husband is not alive or otherwise he is not capable of or not having the source of income to maintain his wife, then the obligation to maintain the mother may fall on the shoulder of the son. Section 20 of the Act makes a provision for maintenance of children and aged parents. The learned trial court has mechanically read this provision and influenced by the fact that the mother is aged and the son who is earning member has an obligation or pious duty to maintain her. Subsection (3) of section 20 of of the Act, 1956 has not been taken into consideration and looked into. Subsection (3) of section 20 of the Act, 1956 puts obligation on son to maintain his aged or infirm parents where the parents are unable to maintain himself or herself or have not their own source or properties. In this case, it is not in dispute that the husband is able to maintain his wife. Section 18 and 20 of the Act, 1956 are to be read together and if are read so, section 20 will come into picture or can be put into service or applied only where the husband i.e. the father is unable to maintain his wife. Though these are socio-economic provisions and same are to be read to extend the benefits to the beneficiaries as provided, but where the husband is an earning member having sufficient means to maintain his wife the liability to maintain the mother under section 20 of the Act cannot be fasten on son in the case. The order of the learned trial court to the extent it directs the son to pay Rs. 1000/- p.m. as interim

maintenance to the respondent is wholly perverse and it cannot be allowed to stand.

9. The next question which falls for consideration is what should have been the amount of interim maintenance to be awarded to the wife from the husband. Normal rule is of 1/3rd of net income may be granted as interim maintenance to the wife. In this case, the petitioner No. 1 has very conveniently not produced his pay slip. In the revision application also, he has not disclosed what is his gross monthly emoluments. However, it is not in dispute that he is an employee of the Water Supplies Board and is a sufficiently senior person. His pay is stated to be Rs. 6000/-p.m.. The son is also employed and his income is stated to be Rs. 7000/-p.m.. To controvert these figures, the petitioners have not produced anything on record and as such this amount has to be taken to be a net monthly income of the petitioner No.1. If we go by the principle of 1/3rd of net income, then Rs. 2000/- may be a reasonable sum which has to be awarded to the wife as interim maintenance. Even Rs. 500/- is deducted from this amount, the amount comes to Rs. 1500/- as the amount of interim maintenance to be awarded to the wife. Even after taking into consideration the amount of maintenance which she is getting under section 125 of the Cr. P.C., this would be more than Rs. 1000/- p.m. and no interference is called for with the order of the learned trial court to the extent it relates to the direction to the petitioner NO.1 to pay Rs. 1000/- p.m. as interim maintenance. In case the order of the learned court below to the extent it relates to the direction to the petitioner No. 2 to pay Rs. 1000/= p.m. as maintenance to the respondent is allowed to stand it will occasion in failure of justice and cause irreparable injury to him.

10. In the result, this revision application succeeds in part and the order of the learned trial court to the extent it gives direction to the petitioner No.2 to pay Rs. 1000/- p.m. as interim maintenance to respondent is quashed and set aside. Rule is made absolute to the aforesaid extent. The petitioner No.1 is directed to pay Rs. 1000/- as costs of this revision application to the respondent.

zgs/-

